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In The

SUPREME COURT OF THE UNITED STATES,

October Term, 1969

No. . . 1502

WALLACE EUGENE McGEE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING

DALE M. QUILLEN
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95 White Bridge Road
Nashville, Tenn. 37205

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Your petitioner, Wallace Eugene McGee, respectfully prays for a rehearing of the order of this Court, dated June 8, 1970, denying his petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

FACTS

This is a criminal action wherein petitioner was convicted and sentenced to two years imprisonment for violation of Title 26 U.S.C. by maintaining an unregistered distillery and manufacturing distilled spirits without paying taxes thereon. Petitioner contention is that under the doctrine of Grosso vs. United States, 88 Sup. Ct. 709, Haynes vs. United States, 88 Sup. Ct. 722 and Marchetti vs. United States, 88 Sup. Ct. 697, as supported by Leary vs. United States, 395 U.S. 6, compliance with these revenue statutes could not be required under the Fifth Amendment to the Constitution of the United States inasmuch as such compliance would constitute petitioner's incrimination of himself under the laws of Tennessee. The Court of Appeals avoided the thrust of these decisions by holding that the statutes involved were designed to appy to "inherently illegal" activities, whereas the present statutes were considered bonafide revenue measures and not aimed at illegal activities.

ARGUMENT

Petitioner would now submit to the Court the following matters not heretofore presented to illustrate the vital importance of the Federal question involved and the fallacy in the notion of the Court of Appeals that distillers are not a "group inherently suspect of criminal activities," particularly in Tennessee.

1. The Importance of the Federal Question. Petitioner asks this Court to take cognizance of the fact that there are now pending, to counsel's knowledge alone, more than twenty cases on the docket of the Sixth Circuit alone, many of which involve severe prison sentences, and all of which hang upon the question presented here; in these cases it has been agreed that the results will depend upon the outcome of the present case. In addition, there are many, many cases pending in District Courts, in Tennessee and elsewhere.

2. The Application of the Statutes to Criminal Conduct. The Court below was grossly mistaken in permitting itself to believe that these laws are not used primarily as a weapon against those suspected of criminal conduct. In 93 of Tennessee's 95 counties, the manufacturing of whiskey per se is as much an offense as Dr. Leary's possession of marijuana, and this is true regardless of any attempt, successful or unsuccessful, by the distiller to register his activities and otherwise comply with federal law. The federal law is regularly used as a mighty flail for the

suppression of distilling activities prohibited by Tennessee law. To mention only a few instances, Petitioner would cite the cases of U. S. vs. Rex Lynn Carden, No. 7100 in the Eastern District of Tennessee, wherein the defendant was sentenced to three years for a case involving 6 quarts of unstamped whiskey; U. S. vs. Cleona Hooper, No. 7055 in the same District, five years; and U. S. vs. Jay V. Ball, No. 7045 et al (two cases) in the same District, 10 years. These cases may be multiplied at will, and it is a matter of judicial record in the Eastern District of Tennessee that the maximum penalty is very often imposed, often in cases involving miniscule amounts of whiskey.

On the other hand, many, many cases involving precisely the same conduct for which Petitioner has been convicted, although investigated and brought by federal agents, are disposed of in state courts for nominal fines. This in itself shows that these sanctions are not being used, as a practical matter, for the collection of revenue, but for the suppression of illegal activity.

The choice of whether to pursue these matters in the federal courts with their severe sentences, or in the state courts with their slaps on the wrists rests largely with enforcement agents. This fact, coupled with the immense discretionary powers of the United States District Attorneys, breeds a selective and discriminatory system of law enforcement, which in itself is unhealthy and probably presents equal protection questions.

CONCLUSION

For the foregoing reasons, as well as those previously urged, it is earnestly suggested that this Court should now consider these statutes in light of the Grosso-Haynes-Marchetti-Leary doctrines. Petitioner therefore prays that the order of this Court denying his petition for a writ of certiorari to the Court of Appeals for the Sixth Circuit be reheard and vacated, and that the petition be granted.

Dated June 25, 1970.

DALE M. QUILLEN,
Attorney for Petitioner

CERTIFICATE OF COUNSEL

The undersigned, Dale M. Quillen, Attorney for Petitioner, hereby certifies that the Petition for Rehearing filed in this cause is presented in good faith, that in his judgment said petition is restricted to the grounds specified in Paragraph 2 of Rule 58 of this honorable Court, and that said petition for rehearing is not interposed for delay.

DALE M. QUILLEN,
Attorney for Petitioner